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SECOND COMMITTEE

PROVISIONAL SUMMARY RECORD OF THE SEVENTH MEETING

Held at the Parque Central, Caracas,
on Wednesday, 17 July 1974, at 3.25 p.m.

Chairman:	Mr. TUNCEL	Turkey
later:	Mr. AGUILAR	Venezuela
Rapporteur:	Mr. NANDAN	Fiji

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C-5201

TERRITORIAL SEA (A/9021; A/CONF.62/C.2/L.3 to L.10) (continued)

Mrs. WARNER (Trinidad and Tobago) said she wished to make some comments on item 2, concerning the territorial sea, and more particularly on documents A/CONF.62/C.2/L.3 to L.6. The proposals submitted by Guyana (A/CONF.62/C.2/L.5) and Spain (A/CONF.62/C.2/L.6) were a praiseworthy attempt to identify the main trends which had emerged from the discussion. Her delegation would, however, have preferred to see the retention of the classical concept of the territorial sea and would therefore favour the formulation introduced by the delegation of India (A/CONF.62/C.2/L.4).

With regard to document A/CONF.62/C.2/L.3, the United Kingdom delegation was to be commended on its effort to present a concise treaty on the territorial sea and, in part III of that draft, to provide a more precise definition of the expression "innocent passage". Her delegation, however, shared the fears of the delegation of the Republic of Korea that the formulation of article 16 was too restrictive and might therefore be dangerous. It was not inconceivable that the activities of a foreign ship traversing territorial waters might well be prejudicial to the peace, good order or security of a coastal State and might not fall within the scope of those provisions, for example, the launching of an aircraft from a non-military vessel. For the same reasons, article 18 was also too restrictive. A general saving clause should therefore be added which would confer on the coastal State the power to enact laws relating to innocent passage through its territorial sea. Such laws should not, however, in any way impede the passage of commercial and trading vessels. Her delegation, like that of Pakistan, had some reservations with regard to article 18, paragraph 5. She wondered on which authority responsibility would rest for determining the liability of a coastal State in cases where the owners of a foreign ship claimed that loss or damage had resulted from the action of a coastal State in the exercise of its sovereignty over its territorial sea. It must be made clear that that was not a matter for arbitration but for decisions in the courts of the coastal State concerned in accordance with its own laws and regulations. Although it was not explicitly stated, that was the proper inference to be drawn from the proposal.

She supported the provisions in article 19, but suggested that the word "may" in the second line should be replaced by the word "shall".

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(Mrs. Warner, Trinidad and Tobago)

With respect to article 20, the passage of submarines or other underwater vessels which did not navigate on the surface of territorial waters could not be considered innocent. She would therefore prefer to see the formulation set forth in the 1958 Geneva Convention retained, namely, "submarines are required to navigate on the surface and show their flag", and the United Kingdom proposal amended to read "submarines and other underwater vehicles are required to navigate on the surface and show their flag".

She supported the 12 nautical mile limit for the territorial sea, provided, however, an exclusive economic zone was accepted together with the retention of the concept of the continental shelf. As her delegation had stated in the plenary Conference, it saw an organic link between the territorial sea, the exclusive economic zone and regional or other arrangements concerning preferential rights of access to the exclusive economic zones and zones of national jurisdiction. It would comment later on the issues of the exclusive economic zone, regional and subregional arrangements for access to the living resources and continental shelf and on the issue of islands and the proposals submitted thereon.

Mr. ARIAS-SCHREIBER (Peru) drew the Committee's attention to a very important question raised during the discussion which had not been brought to its logical conclusion. It was common knowledge that the territorial sea had in the past been considered to be a narrow zone under the sovereignty of the coastal State for purposes mainly connected with neutrality and military defence. Modern industrial development and scientific and technological progress led countries to assume responsibility for what had been called the economic protection of States and ecological protection of the marine environment. Those opposing the territorial sea of 200 sea miles advanced in support of their argument the contention that, in the era of intercontinental missiles, it was useless to extend the limit of the territorial sea for military defence reasons, while they themselves sought to establish a territorial sea of 12 miles wide on the pretext of national security. It was necessary to be logical and to discard the old concept of territorial sea in favour of a new concept adapted to contemporary reality.

The new concept, that of the national sea, should lay stress on economic and social requirements and be based on the need to promote the well-being of mankind. Territory per se did not give rise to rights which, on the other hand, derived from the presence

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(Mr. Arias-Schreiber, Peru)

of a population whose needs should be satisfied; and, as the territory and population together constituted a nation, it was rational that the name "national sea" should be given to the sea area of the coastal State. Only a national sea of that kind would make it possible to arrive at an agreement reconciling the sovereignty of coastal States over the seas adjacent to their coasts with the interests of other States, in respect both of international communications and of the right of access of land-locked States and other geographically disadvantaged countries.

The classical concept of the territorial sea would restrict national sovereignty to a very limited area of the adjacent sea and, in the final analysis, would be of benefit only to the great Powers which had adopted an adamant position on that subject for purposes of domination and maritime hegemony. Such an attitude would preclude a consensus and could, on the contrary, only result in similar intransigence from many other countries. Surely the peoples of the world expected their representatives to show imagination, goodwill and a spirit of justice in order to establish, for the utilization and exploitation of the seas, a legal order which would reconcile the rights and interests of the different nations instead of setting them against each other as had been the case in the past. He was gratified that other delegations, including those of Guyana, Madagascar and El Salvador, shared his point of view. Instead of becoming alarmed at the number of proposals in favour of a 200-mile territorial sea, the developing countries should welcome that trend, because only a measure of that kind would make it possible to protect their resources from the depredations of the great Powers. The land-locked and other disadvantaged countries should not forget that, if they wished to participate in the exploitation of the territorial sea, some resources must still exist, in other words, the territorial sea must be exploited rationally. Any other solution would only benefit the common adversaries of the developing countries.

His delegation supported the Philippine proposal that the 1958 Convention on the Territorial Sea should not be applicable to countries which had already decided to extend the limits of the territorial sea to 200 miles on the basis of reasonable criteria and with due regard to their own requirements.

Mr. Aguilar (Venezuela) took the Chair.

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Mr. LE VAN LOI (Republic of Viet-Nam) said he would explain the position of his Government in the light of some proposals already submitted. Its position was based on the particular situation of Viet-Nam, which had a coastline extending over 1,300 nautical miles, included 201 islands and archipelagos and bordered on a sea which could be regarded as a semi-enclosed sea, because, in order to reach the high seas, it was necessary to pass through straits. The Viet-Namese coast was very diversified: in the north and centre it was particularly indented and embraced many strings of islands, whereas it was very different in the south and south-east, with the Mekong delta, one of the largest rivers in Asia which left heavy alluvial deposits on the coast. Those details showed that the Republic of Viet-Nam had important rights and obligations.

His delegation had given close attention to all the proposals submitted to the Committee and it supported the Guyanan proposal (A/CONF.62/C.2/L.5) which, however, would be improved by being made more specific; in particular, the "other applicable rules of international law", referred to in article 1, should be made more precise. The baselines should be drawn between the outermost points of the national territory, whether continental or insular. On that subject his delegation supported the statement made by the representative of Bangladesh, a country in a situation rather similar to that of Viet-Nam, on the methods to be used for drawing the baselines.

In conclusion, his delegation was prepared to participate in the informal consultations proposed and would certainly make its contribution.

Mr. TSHERING (Bhutan) recalled that, as his delegation had already stated, it was important to reach broad agreement on the question of the territorial sea. Some States had set the limits of their territorial seas unilaterally. As the international area began precisely where the national zone ended, the extension of the limits of the territorial sea to 200 nautical miles could only be of benefit to coastal States or geographically well-situated countries, and such a measure was inconsistent with the ideals of international co-operation, because the resources of the sea ought to benefit all members of the international community without exception. The provisions of article 4 of the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone provided a reasonable basis for delimiting the territorial sea. His delegation was also prepared to support the establishment of a generally acceptable régime for the sea and the sea-bed and joint jurisdiction at the regional or subregional level.

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Mr. CORI (Chile) recalled that it had been decided at the first meeting of the Committee to focus efforts on drafting the key articles of the Convention. On that occasion his delegation had inter alia proposed that the length of statements should be limited and it was particularly gratified that the Venezuelan representative shared those views. Two weeks had elapsed and the Committee had made little headway in its work. Delegations should consider the specific proposals without restating already defined general positions or elaborating on details which could not be dealt with at the current stage or raising matters which should be settled on a bilateral basis. Without levelling criticism at anyone in particular, he proposed that the officers should take steps to prevent all statements from being made which were not relevant to the subject so that the Conference could complete the great amount of work that lay before it. That was the best way of thanking the host country for its cordial welcome.

Mr. ROBLEH (Somalia) said he had already explained his country's position in the plenary. He merely wished to express his full support of the statement made on the previous day by the representative of Ecuador. With regard to the territorial sea, two trends could be noted, one favouring the 12-mile limit and the other the 200-mile limit. The coastal States that had deemed it necessary to extend their limit to 200 miles had done so for economic and security reasons.

The CHAIRMAN announced that a non-governmental organization, the International Chamber of Shipping, had asked to speak in the Second Committee. Referring to rule 65 of the rules of procedure, he said that the text of the statement was very short and concerned the item before the Committee. If there were no objections, he would take it that the Committee authorized him to invite the representative of the International Chamber of Shipping to address the meeting.

Mr. OGISO (Japan) pointed out that at the preceding meeting, his delegation had asked to be included in the list of speakers, but the Secretary of the Committee had said that the list was closed, despite the explanations given to the Nigerian delegation at the previous meeting. The Chairman was now proposing to allow a

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(Mr. Ogiso, Japan)

non-governmental organization to speak on the same item. If the list of speakers was closed, he had no recollection that it included the organization in question. Furthermore, he wished to know whether some delegations were proposing to comment on the documents that had been submitted.

The CHAIRMAN recalled that it had been decided to close the discussion on item 2 and in general to limit participation in the discussion to countries that had not been members of the Sea-Bed Committee or to countries which, though members of that Committee, had submitted new proposals. Furthermore, in accordance with the suggestion made by the representative of Nigeria it had been agreed that delegations might also make comments on statements made by countries belonging to one or other of the two categories he had mentioned.

Accordingly, if there was no objection, he would call first on the representative of Japan to speak, and then on the representative of the International Chamber of Shipping.

Mr. OGISO (Japan) emphasized that much of what had been achieved in Geneva on the question of the territorial sea remained valid. The provisions of those texts could either be preserved or could at any rate serve as a basis for discussion, subject, if necessary, to changes of form. Consequently his delegation supported the first two articles of the text proposed by the United Kingdom (A/CONF.62/C.2/L.3). Similarly, with regard to the delimitation of the territorial sea in the case of two States opposite or adjacent to each other, article 12 of the Geneva Convention on the Territorial Sea and Contiguous Zone provided a balanced solution since it contained the objective criterion of the median line, while being sufficiently flexible to allow for special cases. For the same reasons, his delegation thought that the drafts submitted in documents A/CONF.62/C.2/L.8 and L.9 were somewhat ambiguous and did not deal with the problem adequately.

Miss CALDER (International Chamber of Shipping), speaking at the invitation of the Chairman, said that the International Chamber of Shipping comprised the

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(Miss Calder, International Chamber of Shipping)

national associations of shipowners of 23 countries and attached special importance to the question of the breadth of the territorial sea and the right of innocent passage.

It appeared that the majority of delegations were in favour of a 12-mile territorial limit. It was certainly essential to have a uniform breadth, but as the limits of national jurisdiction increased, so did the importance of safeguarding the interests of ships passing through territorial waters. If only for security reasons, it would in many cases be inconvenient for ships to sail more than 12 miles off-shore.

With regard to the right of innocent passage, the Geneva Convention on the Territorial Sea and the Contiguous Zone gave a generally satisfactory definition, but it might be desirable to clarify it. The basic principle could be retained while it was clearly specified that, save in a certain number of specific cases, such as the exercise of a warlike act, the take-off or landing of aircraft, all passage was innocent. Draft articles to that effect had already been submitted to the Committee.

Mr. GALINDO POHL (El Salvador) said he had listened with close attention to the statement of the representative of the International Chamber of Shipping. Since the ICS was an important body comprising shipowners of 23 countries, and since the concern it felt with regard to international navigation was of general interest, he thought he should make some clarifications without delay to dispel what might be a misunderstanding. The representative of the ICS had pointed to the need for ships enjoying the right of innocent passage to navigate as close to shore as possible. That was a matter that had been discussed at length when the 1958 Convention had been drafted. None of the proposals submitted to the Conference questioned the principles adopted at the time and according to which vessels exercising the right of innocent passage could navigate as close to shore as they wished and put into ports other than their port of destination in cases of danger or when the circumstances required it.

Mr. GODOY (Paraguay), referring to the Peruvian representative's statement on the misgivings aroused by the many proposals to extend the breadth of the territorial sea to 200 miles, wished to point out that his delegation thought it was justifiable to establish a 200-mile economic zone in which navigation would be free and such activities as the laying of submarine cables could be exercised under the supervision of the coastal State, while the resources of the sea and of the sea-bed would be protected against any attempts at depredation harmful to the population of that State. His delegation would

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never associate itself with the manoeuvres of Powers who, while seeking to extend the breadth of their territorial waters to 200 miles, were motivated by their designs on developing countries.

The CHAIRMAN said that the Committee had now concluded its general debate on the agenda item before it. Some further proposals would, however, still be submitted to it, including those of Nigeria.

The General Committee was at present preparing a document summarizing the various trends which had emerged in the course of the preparatory work, the Plenary meetings of the Conference and the meetings of the Committee. It had been working on the variants submitted by delegations to the Sea-Bed Committee (vol. IV of the Report of the Sea-Bed Committee) while referring to the proposals submitted to Sub-Committee II (vol. III of the Sea-Bed Committee). It had endeavoured to express the various views as clearly as possible, without making any additions and without attaching undue importance to questions of form.

In reply to a question by Mr. TREDINNIK (Bolivia), the CHAIRMAN explained that that work had been accomplished by the General Committee itself and not by any group of States.

Replying to Mr. PILLARD (Guyana), the CHAIRMAN said he had hoped to submit that document to the Committee during the afternoon meeting. However despite the collaboration of the Secretariat, it had not yet been possible to finish it.

He suggested with the support of Mr. GALINDO POHL (El Salvador) and Mr. FLANGINI (Uruguay) that in order to expedite the work, the discussion should be held in informal meetings only when that work was concluded and the document had been translated into the various working languages.

Mr. KEDADI (Tunisia) expressed his approval of the method of work proposed by the Chairman, but suggested that the Committee should take advantage of the delay to hear speakers entered on the list for the following agenda item, which concerned the contiguous zone.

The CHAIRMAN noted that no delegation was ready to speak on the contiguous zone. In order to expedite the Committee's work, he suggested that it should hear the representative of Guyana who wished to comment on the draft articles submitted by the United Kingdom.

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Mr. POLLARD (Guyana) said his country entertained reservations regarding the draft articles submitted by the United Kingdom (A/CONF.62/C.2/L.3), in particular on article 16. It was not clear to him whether the words "any threat or use of force in violation of the Charter of the United Nations" in paragraph 2 were meant to be an objective or a subjective criterion. In his view the provisions of the Charter on the question of the resort to force were quite clear. Such resort was legitimate only in cases of aggression and for purposes of legitimate defence. However, other States maintained that Article 51 of the Charter did not prohibit pre-emptive attacks. In the same way the use of force in pursuance of a United Nations decision was the subject of much controversy. In the circumstances the wording of article 16 seemed ambiguous and even dangerous. Similarly it might be wondered whether "justification under international law", a formula which raised the serious problem of the justification of any activities carried out in execution of a judgement of an arbitral tribunal, was an objective or subjective criterion and, in the latter case, what authority would determine whether there was justification. It would also appear from the text of paragraph 2 that the enumeration made there was exhaustive. He would have preferred an enumeration that was merely indicative, for it was not humanly impossible to foresee all the situations that might arise. The same comment applied to the enumeration in paragraph 3 of the same article. His delegation would have difficulty in accepting subparagraphs (e) and (f) of paragraph 2. It might furthermore be wondered whether the acts listed in paragraph 2 were covered by the provisions of paragraph 3.

He considered the determination as to whether passage was innocent to be a purely subjective matter on which only the coastal State was competent to decide. He therefore preferred the text of the Geneva Convention, which he proposed to support.

Finally, he pointed out that whereas paragraph 3 (b) referred to "prior authorization of the coastal State", paragraph 2 mentioned only "authorization from the coastal State". He wondered whether that distinction was fortuitous or deliberate. Would a special prior authorization be required in one case and assumed in the other? His delegation regarded such an interpretation as inadmissible in view of the serious nature of the activities mentioned in that paragraph.

The meeting rose at 4.55 p.m.